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Position Statement

SB 447 & 448 – CAFO Polluter Penalties & Bonding

Senate Bills 447 & 448 (introduced by Cameron Brown) fail to address any of the devastating impacts that Concentrated Animal Feeding Operations (CAFOs) are inflicting on Michigan's public health and environment. The bills also fail to empower the State to take meaningful action to bring pollution violators into compliance. The Sierra Club OPPOSES these bills. Rather, the Sierra Club urges legislators to SUPPORT HB 4667 & SB 444 imposing a temporary moratorium on new and expanding CAFOs until regulations and enforcement resources are available to ensure that CAFOs operate safely.

SB 447 prohibits the expansion of CAFOs that have been found by a court of law to be in violation of the Clean Water Act. It prevents the DEQ from reissuing permits to polluters, and prohibits polluters from expanding. In addition, SB 447 also requires CAFOs to acquire a financial assurance bond of \$100,000 (or up to \$1 million for repeat violators) to the state to be used to clean up pollution damages after they have occurred. SB 448 allows a court of law to revoke a CAFO's permit if the CAFO is convicted of a criminal or civil violation.

Fundamentally Flawed

Senate Bills 447 and 448 do nothing to bring polluting CAFOs into compliance, nor do they enhance the state's ability to take effective regulatory action. Under these bills, polluting CAFOs would continue to pollute and expand. There are three main reasons the bills fail:

Court Action – Required?

In order to revoke a permit from a polluting, permitted CAFO, these bills imply that the DEQ would have to file suit against each and every violator. However, the DEQ already has the ability to revoke a permit without going to court. These bills may actually make it *more* difficult to revoke a permit, by taking away the DEQ's ability to revoke a permit through administrative action *without* court action.

Revoking Permits That Don't Exist

The majority of Michigan's CAFOs do not have a permit to revoke. To date, only 59 of more than 200 large CAFOs in Michigan have obtained permits. Approximately 16 CAFOs have applied for, but have not yet received, permits. The balance of approximately 124 large CAFOs have not even applied for a permit as required to meet a July 1, 2007 deadline. Hundreds of additional animal factories exist in Michigan that fall just under the legal limit which defines a CAFO (1,000 animal units) and triggers a required permit. Many of these facilities are also polluting, but have no permits to revoke.

Financial Assurance Mechanisms – Too Little, Too Late

SB's 447 & 448 do nothing to prevent CAFO pollution in the first place. Requiring CAFOs to obtain financial assurance mechanisms is a good idea, but \$100,000 is not nearly enough. In Lenawee County, the cost of road damage alone caused by one CAFO exceeded \$177,000. Requiring significant financial assurance mechanisms should be just one part of comprehensive regulatory reform of the CAFO industry in Michigan.

These bills fail to address even the most fundamental threats caused by CAFOs. Michigan needs to put an immediate halt to the expansion of CAFOs until the legislature raises operating standards to ensure the protection of public health, and enacts an effective regulatory program with the resources required for its implementation. The Sierra Club urges legislators to support HB 4667 & SB 444 which would impose a moratorium on new and expanding CAFOs and require the DEQ and MDA to produce a report detailing the regulatory status of CAFOs in Michigan.